

General Information Letter: Pension payments taxable under IRC Section 403(b) are not subject to Illinois income tax.

August 29, 2002

Dear:

This is in response to your follow-up letter dated August 6, 2002, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL. In your letter you state as follows:

I am a retired teacher and have received conflicting advice regarding whether or not the income from an annuity I receive is subject to Illinois income tax.

While employed I purchased a "tax deferred annuity" contract which was qualified under Section 403(b) of the Internal Revenue Code. See copy of a transfer from one insurance company to another attached.

Does this income qualify along with our pensions for a subtraction on line 5 of form IL-1040?

I would appreciate a written response for my permanent file.

If it does qualify for said subtraction, please send me the necessary forms to amend my taxes for the number of years permitted since the income from my COMPANY annuity was not subtracted in the past. If my memory is correct, there is something like a 3 year limit for amending taxes.

Please be advised that Section 203(a)(2)(F) in fact does provide a deduction for "all amounts included in... (federal adjusted gross income)... pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b)... of the Internal Revenue Code."

The Exchange of TDAs Agreement, a copy of which you enclosed with your letter, confirms your statement that the annuity in question is federally tax-qualified under Internal Revenue Code Section 403(b). Therefore, income derived therefrom is an allowable subtraction in computing Illinois net income.

Per your request, we enclose multiple copies of Form IL-1040-X for use in filing amended returns. You are correct that the general statute of limitations for filing a refund claim is 3 years after the date

the original return was filed, or 1 year from the date the tax was paid, whichever is later. 35 ILCS 5/911(a).

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax